

## **REMARKS**

### **Introduction**

The present application includes claims 1-27, wherein claims 1 and 22 are presented in independent form. Applicants acknowledge with appreciation the Examiner's indication that claims 2-13 and 17 would be allowable if rewritten into independent form. With this Amendment, Applicants have amended claims 16 and 22 to correct informalities noted by the Examiner on page 2 of the Office Action. Reconsideration and reversal of the rejection of claims 1, 14-16 and 18-27 is respectfully requested in light of the following arguments.

### **Specification**

In the present application, changes to the specification were made to address the Examiner's objections noted at page 2 of the Office Action. The changes provide no new matter.

### **Oath/Declaration**

The Examiner indicated that the Oath or Declaration was defective. However, the Applicants respectfully believe the current Declaration is not defective. A new Declaration is simply not required. "(1) A newly executed oath or declaration is not required under § 1.51(b)(2) and § 1.53(f) in a continuation or divisional application, provided that: (i) The prior nonprovisional application contained an oath or declaration as prescribed by paragraphs (a) through (c) of this section; (ii) The continuation or divisional application was filed by all or by fewer than all of the inventors named in the prior application; (iii) The specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application. 37 C.F.R. 1.63(d).

At the time the original Declaration was signed the PCT application number was not available. This would not make the original Declaration defective. In accordance with 37 C.F.R. 1.63(b)(1), the original application correctly identified the application to which it was directed by title and filing date. A copy of the original Declaration and a copy of the Transmittal Letter to United States Designated/Elected Office, as filed in the parent application, are filed with this response.

If the Examiner is aware of a rule requiring the PCT application number to be provided, Applicants respectfully request the Examiner to provide a citation to same.

### **Non Statutory Double Patenting**

Claim 16 was rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 33 of U.S. Patent No. 6,735,799. A

terminal disclaimer is filed with this response. Applicants do not acquiesce to the Examiner's rejection but in an effort to expedite prosecution have chosen to file the terminal disclaimer. Applicants believe the application is now in condition for allowance. Such allowance is respectfully requested.

### **Claim Objections**

Claims 16-18 and 22-27 were objected to because of informalities. Applicants have amended claims 16 and 22 to incorporate the Examiner's recommendations.

### **Prior Art Rejections**

The Examiner has rejected claims 1, 16, 18, 20-22 and 26-27 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,267,364 to Volk (hereinafter "Volk"). The Examiner also rejected claims 1, 14-15, 19, and 22-25 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,664,270 to Bell et al. (hereinafter "Bell") in view of U.S. Patent No. 5,611,096 to Bartlett et al. (hereinafter "Bartlett") in further view of Volk. The Examiner indicated on page 4 of the current Office Action that claim 29 was rejected under 103(a). Since there is no claim 29 in the present application, Applicants believe the Examiner intended to indicate claim 19 was rejected under 103(a).

Applicants respectfully submit that the Volk patent simply does not support the Examiner's rejection of claims 1, 16, 18, 20-22, and 26-27 under 35 U.S.C. § 102(b) in light of the arguments and amendments made in this response. The case law clearly states that "anticipation requires that a single prior art reference disclose every limitation of the patent claim." General Electric Co. v. Nintendo Co., 50 USPQ2d 1910, 1915 (Fed. Cir. 1999) (citing PPG Industries, Inc. v. Guardian Industries Corp., 37 USPQ2d 1618, 1624 (Fed. Cir. 1996)) ("to anticipate a claim, a reference must disclose every element of the challenged claims and enable one skilled in the art to make the anticipating subject matter."). More particularly, the Federal Circuit has held that the test for anticipation is "[t]hat which would literally infringe if later in time anticipates if earlier than the date of invention." Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 3 USPQ2d 1776 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988).

Applicants respectfully submit that the combination of the Bell patent, the Bartlett Patent, and the Volk patent does not support the Examiner's rejection of claims 1, 14-15, 29, and 22-25 under 35 U.S.C. § 103(a). The case law is clear that in order for the U.S. Patent and Trademark Office to "Establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to

modify the reference or to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” Manual of Patent Examining Procedure (M.P.E.P.) Section 2143.

Claim 1

102(b)

Volk does not disclose a combination including “a first hanger coupled to the housing, the first hanger being configured to couple the housing to the barrier in a first orientation; and a second hanger coupled to the housing, the second hanger being configured to couple the housing to the barrier in a second orientation” as required by claim 1. There is no disclosure in Volk enabling one skilled in the art to practice Volk in the manner suggested in the Office Action. Volk only discloses a single orientation (Fig.1). There is no disclosure in Volk to support the Examiner’s assertion that “the second may be with one hanger attached to the footboard and the other hanger not attached to the footboard.” There is no disclosure to support that the hangers could be to allow proper clearance for only one hanger to be placed over the footboard. Additionally, even if the device were hung in this manner the weight could cause the box 22 to angle upwards, which could pull conduits 20a-c from the air supply 22.

Therefore, Applicants believes that claim 1 is in condition for allowance with respect to Volk. Removal of the rejection and allowance of claim 1 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

103(a)

Additionally, as discussed by the Examiner on page 5 of the Office Action “Bell et al and Bartlett et al fail to teach that their device includes first and second hangers configured to couple the housing in first and second orientations respectively.” As discussed above, Volk also fails to satisfy this limitation.

Therefore, Applicants believe that claim 1 is in condition for allowance with respect to Bell in view of Bartlett in further view of Volk. Removal of the rejection and allowance of claim 1 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 2-21

Claims 2-21 depend from claim 1. In that claim 1 is believed to be allowable, claims 2-21 are also believed to be allowable. Removal of the rejections and allowance of claims 2-21 is respectfully requested.

Claim 22

Volk does not disclose a combination including “means for coupling the housing to the barrier in a first orientation; and means for coupling the housing to the barrier in a second orientation different from the first orientation” as required by claim 22. For at least the reasons stated above for claim 1, claim 22 is believed to be in condition for allowance with respect to Volk and with respect Bell in view of Bartlett in further view of Volk. Removal of the rejections and allowance of claim 22 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 23-27

Claims 23-27 depend from claim 22. In that claim 22 is believed to be allowable, claims 23-27 are also believed to be allowable. Removal of the rejections and allowance of claims 23-27 is respectfully requested.

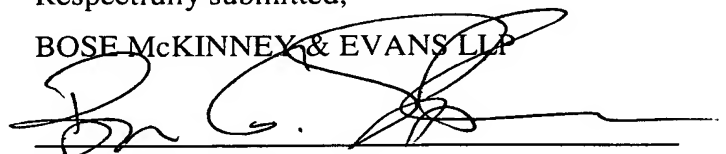
**Final Remarks**

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance. A Notice of Allowance is earnestly solicited.

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP

A handwritten signature in black ink, appearing to read "Brion G. St. Amour", is written over a horizontal line. The signature is stylized with loops and flourishes.

Brion G. St. Amour

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